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7           IN THE UNITED STATES DISTRICT COURT  
8           FOR THE DISTRICT OF OREGON

9           DAVID WOOD,  
10              Plaintiff,

Civil No. 08-6028-AA  
OPINION AND ORDER

11           vs.

12           MICHAEL J. ASTRUE,  
13           Commissioner of Social Security,  
14              Defendant.

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32           Attorneys for defendant

33           AIKEN, Judge:

34           Claimant, David Wood, brings this action pursuant to the  
35           Social Security Act (the Act), 42 U.S.C. §§ 405(g) and

1383(c)(3), to obtain judicial review of a final decision of the Commissioner denying his application for disability insurance benefits under Title II of the Act and for Supplemental Security Income (SSI) disability benefits under Title XVI of the Act. For the reasons set forth below, the Commissioner's decision is affirmed and this case is dismissed.

## PROCEDURAL BACKGROUND

Plaintiff applied for benefits on December 14, 2004, alleging disability as of July 3, 2003. Tr. 69-71, 215-18. His application was denied initially and upon reconsideration. Plaintiff requested and received a hearing before an administrative law judge (ALJ) on May 30, 2007. Tr. 219. At the hearing, plaintiff amended his claim from an "open" to a "closed" period beginning November 6, 2004, and ending August 1, 2006. Tr. 223-24. The parties agree that as of August 1, 2006, plaintiff has been working at substantial gainful activity levels and is therefore ineligible for benefits since that date.

On August 6, 2007, the ALJ issued a decision denying plaintiff's claim for benefits. Tr. 11-21. Plaintiff requested review of the decision which was denied by the Appeals Council on November 21, 2007. Tr. 5-10. Therefore, the ALJ's decision became the final decision of the agency from which plaintiff seeks judicial review.

## **STATEMENT OF THE FACTS**

Plaintiff was 36 years old at the time of the hearing. Tr. 224. He completed the 11<sup>th</sup> grade but failed to earn a high school diploma or General Equivalency Diploma. *Id.* He has past relevant work as a truck driver, trash collection driver, dump

1 truck driver, industrial cleaner, and a janitor. Tr. 273-74.

2 **STANDARD OF REVIEW**

3 This court must affirm the Secretary's decision if it is  
 4 based on proper legal standards and the findings are supported by  
 5 substantial evidence in the record. Hammock v. Bowen, 879 F.2d  
 6 498, 501 (9th Cir. 1989). Substantial evidence is "more than a  
 7 mere scintilla. It means such relevant evidence as a reasonable  
 8 mind might accept as adequate to support a conclusion."  
 9 Richardson v. Perales, 402 U.S. 389, 401 (1971) (quoting  
 10 Consolidated Edison Co. v. N.L.R.B., 305 U.S. 197, 229 (1938)).  
 11 The court must weigh "both the evidence that supports and  
 12 detracts from the Secretary's conclusions." Martinez v. Heckler,  
 13 807 F.2d 771, 772 (9th Cir. 1986).

14 The initial burden of proof rests upon the claimant to  
 15 establish disability. Howard v. Heckler, 782 F.2d 1484, 1486  
 16 (9th Cir. 1986). To meet this burden, plaintiff must demonstrate  
 17 an "inability to engage in any substantial gainful activity by  
 18 reason of any medically determinable physical or mental  
 19 impairment which can be expected . . . to last for a continuous  
 20 period of not less than 12 months. . . ." 42 U.S.C.  
 21 § 423(d)(1)(A).

22 The Secretary has established a five-step sequential  
 23 process for determining whether a person is disabled. Bowen v.  
 24 Yuckert, 482 U.S. 137, 140 (1987); 20 C.F.R. §§ 404.1502,  
 25 416.920. First the Secretary determines whether a claimant is  
 26 engaged in "substantial gainful activity." If so, the claimant  
 27 is not disabled. Yuckert, 482 U.S. at 140; 20 C.F.R.  
 28 §§ 404.1520(b), 416.920(b).

In step two the Secretary determines whether the claimant has a "medically severe impairment or combination of impairments." Yuckert, 482 U.S. at 140-41; see 20 C.F.R. §§ 404.1520(c), 416.920(c). If not, the claimant is not disabled.

In step three the Secretary determines whether the impairment meets or equals "one of a number of listed impairments that the Secretary acknowledges are so severe as to preclude substantial gainful activity." Id.; see 20 C.F.R. §§ 404.1520(d), 416.920(d). If so, the claimant is conclusively presumed disabled; if not, the Secretary proceeds to step four. Yuckert, 482 U.S. at 141.

In step four the Secretary determines whether the claimant can still perform "past relevant work." 20 C.F.R. §§ 404.1520(e), 416.920(e). If the claimant can work, she is not disabled. If she cannot perform past relevant work, the burden shifts to the Secretary. In step five, the Secretary must establish that the claimant can perform other work. Yuckert, 482 U.S. at 141-42; see 20 C.F.R. §§ 404.1520(e) & (f), 416.920(e) & (f). If the Secretary meets this burden and proves that the claimant is able to perform other work which exists in the national economy, she is not disabled. 20 C.F.R. §§ 404.1566, 416.966.

## DISCUSSION

#### 1. The ALJ's Findings

At step one of the sequential analysis outlined above, the ALJ found that plaintiff had not engaged in substantial gainful activity during the closed period from November 1, 2004, through

1 August 1, 2006; thereafter, the parties agree, plaintiff returned  
2 to work at substantial gainful activity levels. Tr. 16-17. See  
3 20 C.F.R. §§ 404.1520(b), 416.920(b). At step two, the ALJ found  
4 that plaintiff had the impairments of cognitive disorder and  
5 chronic adjustment disorder, with mixed disturbance of emotions  
6 and conduct, a combination that was "severe" within the meaning  
7 of the regulations. Tr. 17. See 20 C.F.R. §§ 404.1520(c),  
8 416.920(c). At step three, the ALJ found that plaintiff's  
9 impairments did not meet or equal the requirements of a listed  
10 impairment. Tr. 17-18. See 20 C.F.R. §§ 404.1520(a)(4)(iii),  
11 404.1520(d), 416.920(a)(4)(iii), 416.920(d).

12 The ALJ then determined that plaintiff had the residual  
13 functional capacity (RFC) to perform work at all exertional  
14 levels, with the following non-exertional limitations: not  
15 capable of following detailed instructions; able to perform  
16 activities within a schedule, maintain a routine, make simple  
17 work related decisions, and complete a normal workday/workweek,  
18 but should not be required to work with others, and was limited  
19 to short/simple tasks; able to ask simple questions, accept  
20 instructions, and maintain socially appropriate behavior, but  
21 should not be required to work with the general public and should  
22 have only limited contact with co-workers, and no teamwork. Tr.  
23 18. See 20 C.F.R. §§ 404.1520(e), 404.1545, 416.920(e), 416.945.  
24 At step four, the ALJ found that, during the closed period,  
25 plaintiff was able to perform his past relevant work within the  
26 RFC limitations noted above. Tr. 22. Therefore, the ALJ found  
27 plaintiff not disabled.

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1           2. Plaintiff's Allegations of Error

2           A. ERRONEOUS CREDIBILITY FINDING AS TO PLAINTIFF'S  
3           TESTIMONY

4           I find no error in the ALJ's finding that plaintiff's  
5           perceptions of his limitations is not totally credible. The ALJ  
6           cited clear and convincing reasons supported by substantial  
7           evidence for this finding. These reasons included plaintiff's  
8           work history, both before and after the closed period, which  
9           fails to comport with plaintiff's assertion that his impairment  
10          was long-standing. The ALJ also cited plaintiff's activities of  
11          daily living, including getting his children ready for school,  
12          grocery shopping, and cooking. I agree with the ALJ as supported  
13          by the record that plaintiff's assertion that anxiety and  
14          cognitive limitations due to a brain injury he suffered at age  
15          eight prevented him from working for a discrete period of time  
16          (20 months) over 25 years later, is not credible. The ALJ noted  
17          that plaintiff suffered the accidental death of his stepson in  
18          June 2005, however, this event occurred six months after  
19          plaintiff applied for benefits, and has not prevented him from  
20          returning to work. Tr. 19.

21           The ALJ offered clear and convincing reasons for rejecting  
22          plaintiff's allegation of disability, which are supported by  
23          substantial evidence. I will uphold that finding.

24           B. IMPROPER EVALUATION OF EXAMINING PSYCHOLOGIST'S  
25           OPINION

26           Peter Moutlon, Ph.D., examined plaintiff on February 9,  
27          2005. Tr. 178-97. Again, the ALJ cited clear and convincing  
28          reasons for doubting Dr. Moutlon's conclusion that plaintiff's

1 impairments are longstanding and unlikely to resolve. Tr. 185-  
2 190. The ALJ's findings are supported by plaintiff's work  
3 history, specifically plaintiff's undisputed resumption of  
4 substantial gainful activity as of August 2006. Tr. 223.

5 C. IMPROPER EVALUATION OF LAY WITNESS TESTIMONY

6 Finally, plaintiff argues that the ALJ's failure to  
7 properly address the testimony of his partner, Ms. Davis, was  
8 error. Even assuming error, I find it was harmless when  
9 considered in the context of the record. See Stout v.  
10 Commissioner, 454 F.3d 1050, 1056 (9<sup>th</sup> Cir. 2005) (such error can  
11 only be considered harmless if a reviewing court can conclude  
12 that no reasonable ALJ, when fully crediting the testimony, could  
13 have reached a different disability determination). Here, even  
14 crediting Ms. Davis's statements that at times plaintiff was  
15 overwhelmed by stress, that she needed to leave him notes around  
16 the house to help him get his tasks accomplished, and that he  
17 occasionally called in for help to find a particular address  
18 while driving his truck, nonetheless these statements fail to  
19 explain why plaintiff could not perform work subject to the  
20 limitations accounted for in the ALJ's RFC finding.

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## CONCLUSION

The Commissioner's decision is based on substantial evidence, and is therefore, affirmed. This case is dismissed.

IT IS SO ORDERED.

Dated this 13 day of January 2009.

/s/ Ann Aiken

Ann Aiken

United States District Judge